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STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO, *ex rel.* HECTOR H. BALDERAS, Attorney General,	)	
Plaintiff,	)	
v.	)	No. D-101-CV-2016-00131
VOLKSWAGEN GROUP OF AMERICA, INC., a New Jersey Corporation; VOLKSWAGEN AG, a German Corporation; AUDI OF AMERICA, LLC, a Delaware Corporation; AUDI AG, a German Corporation; PORSCHE CARS NORTH AMERICA, INC., a Delaware Corporation; PORSCHE AG, a German Corporation,	)	JURY TRIAL DEMANDED
Defendants.	)	

COMPLAINT FOR VIOLATIONS
OF NEW MEXICO'S AIR QUALITY CONTROL ACT,
UNFAIR TRADE PRACTICES ACT, AND FOR PUBLIC NUISANCE

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Dated: January 19, 2016

EXHIBIT A - PART I

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COMES NOW Plaintiff, the State of New Mexico, by the Honorable Hector H. Balderas, Attorney General of the State of New Mexico ("Plaintiff" or the "State"), and brings this action against defendants Volkswagen Group of America, Inc., Volkswagen AG, Audi of America, LLC, Audi AG, Porsche Cars North America, Inc., and Porsche AG (collectively, "Defendants"), seeking statutory penalties and all damages, including punitive damages, recoverable at law or in equity to remedy Defendants' willful and deliberate violations of New Mexico environmental and consumer protection statutes, and for public nuisance under New Mexico common law.

By their acts, conduct, and practices alleged below, Defendants violated New Mexico's Air Quality Control Act ("AQCA," N.M. Stat. Ann. §§ 74-2-1 through 74-2-17, and regulations promulgated thereunder), New Mexico's Unfair Trade Practices (N.M. Stat. Ann. § 57-12-1, *et seq.*), and New Mexico's False Advertising Act (N.M. Stat. Ann. § 57-15-1, *et seq.*).[1] Defendants' conduct, moreover, has created a public nuisance for which the State seeks nominal and punitive damages under New Mexico statutory and common law.

In support of its Complaint, the State avers as follows:

I. INTRODUCTION

1. Defendants design, manufacture, deliver, sell, and import automobiles under the brand names Volkswagen, Audi, and Porsche. They advertise, market, and sell these automobiles to consumers in the State of Mexico through a network of dealerships, and through a variety of advertising media, including Internet, television, magazines, newspapers, social media, and other printed brochures and advertising materials.

[1] In this Complaint, the Attorney General does not presently allege a specific claim under the False Advertising Act, but has sent the requisite pre-suit notice to Defendants under N.M. Stat. Ann. § 57-15-3, offering Defendants an opportunity to remedy their conduct. A copy of that letter is attached as Exhibit A hereto. Should Defendants fail to comply with the demands of that letter by the deadline stated therein, February 11, 2016, the Attorney General intends to amend this Complaint to assert a False Advertising Act claim against Defendants.

2. As part of the privilege of doing business in the State of New Mexico, Defendants must ensure that their vehicles comply with State environmental regulations concerning vehicle emissions, and must further ensure that their advertising and marketing is fair and not based on unfair, deceptive, false, or misleading information.

3. Here, however, Defendants boldly touted untruths and tried to sell vehicles on the basis of a misleading and deceitful marketing message. This case arises because Defendants have deliberately breached those obligations for many years by designing, engineering, and installing in certain of their vehicles "defeat device" software that was specifically intended to thwart emissions testing for harmful pollutants and then introducing those vehicles into this State.

4. The "defeat device" software that was secretly installed on certain of Defendants' vehicles would detect the conditions present during an emissions test and then switch the vehicle's engine into a cleaner running mode for purposes of passing the test. When emissions testing conditions were not present, such as during regular driving of the vehicle, the software released the engine to run a in a more powerful manner which also caused the vehicle's emissions to far exceed fleet average nitrogen oxides emission limits by as much as 30-40%.

5. The specific type of pollutants at issue here are important because Defendants' engines emit (among other pollutants) nitrogen oxides, or NOx, which are extremely damaging to the environment (*i.e.*, they contribute to smog and global warming) and harmful to "at risk" populations of people, including children, the elderly, and people with asthma, emphysema, and other pre-existing respiratory disease. Indeed, NOx gases are so heavily regulated by emissions standards because even light exposure to these pollutants has been linked with a range of serious health effects, including increased asthma attacks and other respiratory illnesses that can be serious enough to require hospitalization and extended medical care.

6. Over the same period of time that Defendants were secretly and illegally polluting the air in the State of New Mexico with the harmful emissions from their vehicles, they were advertising and touting these very same vehicles as being "clean," "green" and environmentally-friendly options to consumers in the State.

7. Supported by a massive advertising campaign, Defendants claimed that superior engineering allowed their cars to perform better, consume less fuel, and emit fewer harmful pollutants than diesel cars of the past, making them a great fit for eco-conscious consumers. In fact, the complete opposite was true. Defendants cars were and are not "clean," or "green" (as that word is understood), or environmentally-friendly vehicles. The vehicles fell far short of meeting applicable vehicle emissions standards, and were un-clean, not "green," and otherwise harmful to the environment because of the noxious pollutants that they generated.

8. Defendants' deliberate wrongdoing has been ongoing since at least its marketing and sale of certain 2009 model year vehicles beginning, upon information and belief, in June 2008. Yet Defendants managed to conceal their scheme for years, even in the face of direct questioning by regulators concerning irregularities in Volkswagen emissions figures that were uncovered in a May 2014 study conducted by West Virginia University researchers. *See* Final Report: In Use Emissions Testing of Light-Duty Diesel Vehicles in the United States, May 15, 2015 (available at http:// www.theicct.org/sites/default/files/publications/WVU_LDDV_in-use_ICCT_Report_Final _may 2014.pdf. (last accessed January 7, 2016).

9. After more than a year of denials, Defendants finally came clean during a September 3, 2015 meeting with the U.S. Environmental Protection Agency (EPA) and the California Air Resource Board (CARB), admitting that certain of their four-cylinder 2.0 liter

TDI® diesel engine vehicles from model years 2009-2015 contained hidden "defeat device" software that was designed and intended to evade emissions testing.

10. Shortly thereafter, on September 18, 2015, Volkswagen's misconduct was made public when the EPA issued a Notice of Violation of the Clean Air Act ("NOV I") to Volkswagen AG, Audi AG, and Volkswagen Group of America, Inc. stating that model year 2009 – 2015 Volkswagen and Audi diesel cars equipped with 2.0 liter TDI® engines included "defeat device" software designed and intended to circumvent EPA emissions standards for nitrogen oxides.

11. On November 22, 2015 – just days after the EPA's issuance of NOV I – Defendants, speaking through Michael Horn, Volkswagen Group of America, Inc.'s CEO, admitted to years of Defendants' cheating emissions tests through the use of "defeat device" software, and to Defendants' dishonesty to regulators and consumers alike. Speaking before hundreds of automotive journalists, VW dealers, and others at a new VW Passat launch event at the Brooklyn Naval Yard in New York, Horn stated:

> So let's be clear about this. Our company was dishonest with the EPA, and the California Air Resources Board, and with all of you, and in my German words: 'we have totally screwed up.' We must fix those cars to prevent this from ever happening again and we have to make this right with the government, the public, our customers, our employees and also very important, our dealers. And this kind of behavior I can tell you out of my heart is completely inconsistent with our core values.... We are committed to do what must be done and to begin to restore your trust.... You can be sure that we will continue not only to correct this TDI issue, and to straighten things out, and to pay what we have to pay...

See https://www.youtube.com/watch?v=2pIx27_NcQE (last accessed on January 7, 2016).

12. Horn's frank admission of Defendants' dishonesty and deliberate wrongdoing was preceded by a written statement and video posted on Volkswagen AG's website by its then-CEO

Dr. Martin Winterkorn who has since resigned as a result of this scandal. Winterkorn's written statement read, in part:

> I personally am deeply sorry that we have broken the trust of our customers and the public. We will cooperate fully with the responsible agencies, with transparency and urgency, to clearly, openly, and completely establish all of the facts of this case. Volkswagen has ordered an external investigation of this matter.... We do not and will not tolerate violations of any kind of our internal rules or of the law.

See Volkswagen Press Release, Sept. 20, 2015, "Statement of Prof. Dr. Martin Winterkorn, CEO of Volkswagen AG." In Winterkorn's video, he further apologized by stating:

> The irregularities in our group's diesel engines go against everything Volkswagen stands for. To be frank with you, manipulation at Volkswagen must never happen again.... I personally am deeply sorry that we have broken the trust of our customers. I would like to make a formal apology to our customers to the authorities and to the general public for this misconduct.

See https://www.youtube.com/watch?v=wMPX98_H0ak (last accessed on January 7, 2016).

13. Defendants have also been frank in their admissions concerning their motive for surreptitiously trying to evade emissions tests, attributing it to their own corporate greed. According to Volkswagen itself, its engineers were having a difficult time getting the Company's diesel engine technology to meet U.S. emissions standards in a cost-effective manner. At the same time, Volkswagen was desperate to overcome the U.S. market's reluctance for its diesel-engine vehicles because of the perception that they were dirty and bad for the environment. Therefore, as Defendants admit, they cheated, equipping their diesel engine cars with sophisticated software designed to pass emissions tests, while also marketing the same cars as being "clean" and "eco-friendly" in order to drive sales.

14. More troubling news followed Volkswagen's initial admissions, when, on November 2, 2015, the EPA issued a second Notice of Violation the Clean Air Act ("NOV II") to Volkswagen AG, Volkswagen Group of America, Inc., Audi AG, Porsche AG, and Porsche

Cars North America, Inc. stating that certain additional model year 2009 to 2016 Volkswagen, Audi and Porsche diesel cars equipped with 3.0 liter TDI® engines also included "defeat device" software to circumvent EPA emissions standards for nitrogen oxides. This hidden software allowed emissions of nitrogen oxide up to nine times in excess of regulations under normal driving conditions.

15. After first denying these new allegations, on November 19, 2015, Volkswagen officials *again* admitted culpability for installing defeat device software on certain Volkswagen, Audi and Porsche vehicles equipped with 3.0 liter TDI® engines, and confirmed that such cheating had taken place since 2009.

16. Presently, all of Defendants' 2.0 liter and 3.0 liter TDI® diesel engine automobiles marketed and sold in New Mexico (and throughout the United States) since 2008 have been implicated in using defeat device software to evade emissions testing; have been unfairly, deceptively, falsely, and misleadingly marketed and sold; and have been rampantly polluting the environment of this State with excess nitrogen oxides emissions as a result of Defendants' admitted misconduct. Numerous investigations, domestically, internally at Volkswagen, and across the globe, are still underway.

17. To date, the sixteen (16) makes and models of vehicles marketed and sold by Defendants in the State of New Mexico with illegal emissions and "defeat device" software are as follows:

Affected 2.0 liter diesel models and model years

- Volkswagen Jetta (2009-2015)
- Volkswagen Jetta SportWagen (2009-2014)
- Volkswagen Beetle (2012-2015)
- Volkswagen Beetle Convertible (2012-2015)
- Audi A3 (2010-2015)
- Volkswagen Golf (2010-2015)

- Volkswagen Golf SportWagen (2015)
- Volkswagen Passat (2012-2015)

Affected 3.0 liter diesel vehicle models and model years

- Volkswagen Touareg (2009-2016)
- Porsche Cayenne (2013-2016)
- Audi A6 Quattro (2014-2016)
- Audi A7 Quattro (2014-2016)
- Audi A8 (2014-2016)
- Audi A8L (2014-2016)
- Audi Q5 (2014-2016)
- Audi Q7 (2009-2016)

(hereafter, these vehicles are referred to as the "Affected Vehicles").

18. It is believed that approximately 580,000 Affected Vehicles were sold in the U.S. during the relevant time frame – with about 500,000 of the Affected Vehicles being equipped with the 2.0 liter TDI® diesel engine and about 80,000 of the Affected Vehicles being equipped with the 3.0 liter TDI® diesel engine.

19. Upon information and belief, between 4,000 and 10,000 of these Affected Vehicles were delivered, offered for sale, marketed, and sold in the State of New Mexico and many of these Affected Vehicles continue to emit dangerous and harmful pollutants into the air of this State.

II. JURISDICTION

20. This court has personal jurisdiction over each of the Defendants because Defendants' acts, practices, and conduct which give rise to this civil action occurred in the State of New Mexico. While the engineering, design, and manufacture of the Affected Vehicles took place outside of the State of New Mexico, Defendants deliberately and purposefully marketed and sold such vehicles in the State, and thus illegally polluted the air and the environment here. In addition, each of the Defendants developed, authored, edited, and approved each of the advertisements alleged in this Complaint to be unfair, deceptive, false or misleading. Each of

these advertisements, moreover, targeted consumers who are citizens of the State of New Mexico.

21. The Affected Vehicles designed and manufactured by Defendants flow into the State of New Mexico through the stream of commerce and Defendants knew and expected that these vehicles would be purchased by New Mexico consumers.

22. Indeed, as noted below, Volkswagen specifically claimed that it "was the first automaker to make clean diesel cars certified in all 50 states," evidencing Defendants' expectation that the Affected Vehicles would be purchased by New Mexico consumers.

23. Defendants also sold thousands of Affected Vehicles to dealerships in the State of New Mexico, and contracted with dealerships located in the State for the purposes of marketing and reselling those vehicles in this State.

24. By purposefully placing their illegal, polluting vehicles in the State of New Mexico, and purposefully placing advertisements across a variety of media throughout the State of New Mexico, each of the Defendants has purposefully availed itself through specific acts of the privilege of conducting activities within New Mexico and is thereby subject to the specific personal jurisdiction of the Courts of this State under New Mexico's long-arm statute for claims relating to the Affected Vehicles. *See* N.M. Stat. Ann. § 38-1-16.

25. In addition this Court has personal jurisdiction over Volkswagen Group of America, Inc., Audi of America, LLC, and Porsche Cars North America, Inc. pursuant to N.M. Stat. Ann. § 38-1-6(A).

26. This Court's exercise of personal jurisdiction over all Defendants is consistent with due process.

27. This Court has subject matter jurisdiction because the claims at issue arise under the statutes and common law of the State of New Mexico, including N.M. Stat. Ann. § 74-2-12(A)(2), N.M. Stat. Ann. § 57-12-8, and N.M. Stat. Ann. § 57-12-11.

I. VENUE

28. Venue is proper in Santa Fe County because a plaintiff resides here, and some or all of the acts, practices and conduct of Defendants which give rise to this civil action occurred here in Santa Fe County. *See* N.M. Stat. Ann. §§ 38-3-1(A), 38-3-1 (B); 57-12-8. In addition, venue is proper in Santa Fe County against the foreign corporation defendants because a plaintiff resides here, and none of the foreign corporation defendants maintain a corporate agent for purposes of service of process within the State. Accordingly, venue is proper in any county of the State. N.M. Stat. Ann. § 38-3-1(F).

III. THE PARTIES

A. PLAINTIFF

29. Plaintiff is the State of New Mexico, by the Honorable Hector H. Balderas, the duly-elected Attorney General of the State of New Mexico, who has the statutory authority to enforce laws for the protection of the public. The Attorney General is authorized to act on behalf of the State in all actions when the interests of the State require action in his judgment, and is further empowered to prosecute all actions and proceedings brought by any state officer or head of a state department, board or commission, or any employee of the state in his official capacity. N.M. Stat. Ann. § 8-5-2(B-C).

30. The Attorney General is specifically authorized to bring suit to enforce the Unfair Practices Act (*see* N.M. Stat. Ann. § 57-12-8), the False Advertising Act (*see* N.M. Stat. Ann. §

57-15-4),[2] and the Air Quality Control Act, including all ordinances, regulations and standards promulgated thereunder (*see* N.M. Stat. Ann. § 74-2-12.1 (A-C)).

B. DEFENDANTS

1. **Volkswagen Group of America, Inc.**

31. Defendant Volkswagen Group of America, Inc. ("VW America") is a New Jersey corporation with its principal place of business located at 2200 Ferdinand Porsche Drive, Herndon, Virginia 20171. VW America is the wholly-owned U.S. subsidiary of Defendant Volkswagen AG, and it engages in business, including the advertising, marketing and sale of Volkswagen automobiles, in all 50 states, including New Mexico. In 2014 alone, VW America sold 552,729 vehicles from its 1,018 dealer locations in all 50 states, including 95,240 TDI® Clean Diesel vehicles. VW America has four dealerships marketing and selling its vehicles in New Mexico.

2. **Volkswagen AG**

32. Volkswagen Aktiengesellschaft ("VWAG"; VW America and VWAG are collectively referred to herein as "Volkswagen" or "VW") is a German corporation with its principal place of business in Wolfsburg, Germany. VWAG is one of the largest automobile manufacturers in the world, and is in the business of designing, developing, manufacturing, and selling automobiles. VWAG is the parent corporation of VW America, Audi AG, and Porsche AG. According to VWAG, it sold 10.14 million cars worldwide in 2014 – including 6.12 million VW-branded cars, 1.74 million Audi-branded cars, and 189,849 Porsche-branded cars. Combined with other brands, VWAG boasts a 12.9% percent of the worldwide passenger car market. VWAG's sales revenue in 2014 totaled €202 billion (approximately $221 billion) and

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[2] *But, see* n.1, above.

sales revenue in 2013 totaled €197 billion (approximately $215 billion). At €12.7 billion (approximately $13.9 billion), VWAG generated its highest ever operating profit in fiscal year 2014, beating the previous record set in 2013 by €1.0 billion (approximately $1.1 billion).

33. VWAG engineered, designed, developed, manufactured, and installed the "defeat device" software on the Affected Vehicles equipped with the 2.0 liter TDI® diesel engine, and exported these vehicles with the knowledge and understanding that they would be sold in the State of New Mexico. VWAG also developed, reviewed, and approved the marketing and advertising campaigns designed to sell the Affected Vehicles.

3. **Audi of America, LLC**

34. Audi of America, LLC ("Audi America") is a Delaware limited liability company with its principal place of business located at 2200 Ferdinand Porsche Drive, Herndon, Virginia 20171. Upon information and belief, Audi America is a wholly-owned U.S. subsidiary of Defendant Audi AG, and it engages in business, including the advertising, marketing and sale of Audi automobiles, in all 50 states, including New Mexico. According to Audi America, it has established U.S. sales records in each of the past five years, effectively doubling its U.S. sales over this period. Audi now maintains a network of 280 dealers nationwide, with one in New Mexico.

4. **Audi AG**

35. Audi Aktiengesellschaft ("Audi AG"; Audi America and Audi AG are collectively referred to herein as "Audi") is a German corporation with its principal place of business in Ingolstadt, Germany. Upon information and belief, Audi AG is the parent of Defendant Audi America and a subsidiary of the Audi Group, which is a wholly-owned subsidiary of Defendant Volkswagen AG. Audi AG designs, develops, manufactures, and sells

luxury automobiles. According to Audi, the Audi Group sold 1.74 million cars worldwide in 2014, with sales revenues in 2014 totaling €53.8 billion (approximately $58.8 billion). Audi's operating profit in fiscal year 2014 was €5.15 billion (approximately $5.63 billion).

36. Audi AG engineered, designed, developed, manufactured and installed the "defeat device" software on the Affected Vehicles equipped with the 3.0 liter TDI® diesel engine, and exported these vehicles with the knowledge and understanding that they would be sold in the State of New Mexico. Audi AG also developed, reviewed, and approved the marketing and advertising campaigns designed to sell its Affected Vehicles.

5. **Porsche Cars North America, Inc.**

37. Porsche Cars North America, Inc. ("PCNA") is a Delaware corporation with its principal place of business located at 1 Porsche Drive, Atlanta, Georgia 30354. PCNA is a wholly-owned U.S. subsidiary of Defendant Porsche AG, and it engages in business, including the advertising, marketing and sale of Porsche automobiles, in all 50 states, including New Mexico. According to PCNA, 2014 represented its best annual results in Porsche history in the U.S., with 47,007 automobiles delivered. PCNA now maintains a network of 189 dealers nationwide, including in the State of New Mexico.

6. **Porsche AG**

38. Porsche Aktiengesellschaft ("Porsche AG"; PCNA and Porsche AG are collectively referred to herein as "Porsche") is a German corporation with its principal place of business located in Stuttgart, Germany. Porsche AG designs, develops, manufactures, and sells luxury automobiles. Porsche AG is the parent of PCNA and is a wholly-owned subsidiary of Volkswagen AG. According to Porsche, it sold 187,208 cars worldwide in 2014, with sales

revenues in 2014 totaling €17.2 billion (approximately $18.8 billion). Porsche's operating profit in fiscal year 2014 was €2.79 billion (approximately $2.97 billion).

39. Porsche AG installed the "defeat device" software on the Affected Vehicles equipped with the 3.0 liter TDI® diesel engine, and exported these vehicles with the knowledge and understanding that they would be sold in the State of New Mexico. Porsche AG also developed, reviewed, and approved the marketing and advertising campaigns designed to sell its Affected Vehicles.

IV. FACTUAL ALLEGATIONS

A. Volkswagen Develops A Plan To Expand The Market For Its Diesel Vehicles In The United States

40. According to Volkswagen, the "starting point" for its scheme to evade U.S. emissions regulations began more than a decade ago with a "strategic decision to launch a large-scale promotion of diesel vehicles in the United States in 2005." *Volkswagen News Release*, Dec. 10, 2015. While most automakers in the early 2000s were investing heavily in the development of hybrid electric vehicles, Volkswagen took a different route, and banked its growth and success on diesel engine technology.

41. Volkswagen had invested a great deal of money developing its TDI® (which stands for "turbocharged direct injection") diesel engine technology, and by 2007 it boasted that its TDI® diesel engines represented a technological leap in both efficiency and performance, thereby finally making diesel engines more practical and desirable for passenger vehicles in the United States.

42. Volkswagen's problem, however, was the U.S. consumer's acceptance of its TDI® diesel engine technology. Unlike in the European market, the U.S. consumer market demonstrated significant reluctance to buy diesel engine-powered vehicles.

43. Among other things, diesel engine vehicles in the U.S. were perceived by consumers as being dirty, sluggish-running vehicles that emitted larger amounts of bad smelling and noxious smoke and soot. Such vehicles were thus perceived as being bad for the environment and, as a result, sales perennially fell short of expectations.

44. Despite Volkswagen's ambitions to push TDI® diesel sales in the U.S., Volkswagen now admits that its engineers were still having difficulty getting the Company's TDI® diesel engine technology "to meet by legal means the stricter nitrogen oxide requirements in the United States within the required timeframe and budget." *Volkswagen News Release*, Dec. 10, 2015.

45. According to news reports, a top former executive at Volkswagen, Wolfgang Hatz, who, at the time, was in charge of engine development, expressed frustration in 2007 with new U.S. emissions standards announced by CARB. Hatz commented during a technology demonstration hosted by Volkswagen in San Francisco in 2007 that "[Volkswagen] can do quite a bit and we will do a bit, but 'impossible' we cannot do." "From my point of view," Hatz continued, "the CARB is not realistic…[and] "I see it as nearly impossible for [Volkswagen]."

46. Volkswagen was plunged into an internal struggle about how to proceed in the U.S. market given the applicable emissions standards. Wolfgang Bernhard, a former Daimler executive who was then a top executive at Volkswagen, championed a technology-sharing agreement with Mercedes-Benz and BMW to jointly develop a system using urea (generically known as a "Diesel Exhaust Fluid" or "DEF" system and marketed as "Bluetec" by Mercedes and as "AdBlue" by Volkswagen and other German vehicle manufacturers), which assists in neutralizing emissions of nitrogen oxides. Hatz originally supported the technology, stating to the public at the Detroit Auto Show in early 2007 that "Bluetec technology allows us to

demonstrate Audi's commitment to always being at the very forefront of diesel technology." But internal friction was building at Volkswagen because of the high costs of the sharing agreement, and the more than $350 per-vehicle installation cost of a urea-based system.

47. Hatz is reported to have "survived" the internal battle at Volkswagen and led a faction that supported developing and using a less expensive system that did not require urea technology. Bernhard soon resigned and the Bluetec technology-sharing arrangement was scrapped.

48. But with no easy solution, and with the time pressure of new diesel models set for release in the U.S., Volkswagen made the decision to cheat by instead developing and installing "defeat device" software, and continuing its use even after technical (but more costly) solutions were available to reduce nitrogen oxide emissions. Hatz has since resigned after being suspended amidst the fallout of the current "Dieselgate" scandal.

49. According to German news reports, Volkswagen knew that its "software" solutions to meet U.S. emissions regulations were, in fact, illegal, but decided to implement them anyway.

50. Third-party supplier Bosch, which helped to develop and supply the defeat device software installed in the 2.0 liter TDI® engines, is reported to have warned Volkswagen specifically that it would be illegal to sell cars with the software set so as to evade emissions testing, but Volkswagen ignored Bosch, and implemented and installed the software in exactly that forbidden manner.

51. Despite its inability to engineer a solution to its diesel emissions problems and despite knowing that the only way it could meet U.S. emissions requirements was to install software to cheat emissions testing, Volkswagen effectively doubled-down on its ambitions in

the U.S. by launching an aggressive ten-year plan to triple its annual U.S. sales with the support of a multi-million dollar marketing push, headlined by its now-rebranded (and falsely described) "Clean Diesel" TDI® engine technology.

52. By 2008, Volkswagen was heavily touting its development of "Clean Diesel" technology, explaining in its own publications that its 2.0 Liter TDI® engine represented a breakthrough in fuel economy, power and cleanliness with a pioneering "exhaust gas after-treatment" system that offered "the potential for future improvements in exhaust gas standards and the associated technologies." *See* "Self Study Program 826803: 2.0 Liter TDI Common Rail Bin5 ULEV Engine," Volkswagen of America, Inc. (2008). According to Volkswagen, its 2.0L TDI® engine's "after-treatment" system consisted of a particulate filter with upstream oxidation catalyst and an Exhaust Gas Recirculation ("EGR") system designed to reduce NOx emissions so as to comply with "all emissions regulations" in the United States.

53. Volkswagen used its supposed "Clean" emissions as a selling point to consumers increasingly concerned about the environment, and even professed that its diesel-based technology was on par with, if not better than, the many hybrid electric options offered by Volkswagen's competitors.

54. For example, in an October 2009 interview with *Business Insider*, Mark Barnes, the Chief Operating Officer of VW America, was pointedly asked "What is the advantage of a diesel over a hybrid?" and he explained:

> It's a fantastic powertrain. It gives very good fuel economy. It's also good for the environment because it puts out 25% less greenhouse gas emissions that what a gasoline engine would. And thanks to the uniqueness of the TDI motor, it cuts out the particulate emissions by 90% and the emissions of nitrous oxide are cut by 95%. So a very, very clean running engine. Clean enough to be certified in all 50 states.

Gayathri Vaidyanathan, "Volkswagen Preps for a Diesel Revolution," *Business Insider*, Oct. 2009; available at http://www.businessinsider/volkswagen-preps-for-a-diesel-revolution-2009-10 (last accessed on January 7, 2016).

55. In that same interview, when asked "how do you re-brand something that's dirty like diesel as something that's green?" Barnes stated:

> The way we've gone about it is through a number of communication pieces. One of them we've used is 'TDI Truth & Dare.' It is a very good website that compares some older diesels versus the current TDI Clean Diesel. And one of the things we do is we put coffee filters over the exhaust pipes of both cars. We let them run for five minutes and after they are done, we take them off and the older diesel product (not a VW diesel) has a round sooty spot on that coffee filter. Ours is very clean. In fact they actually make coffee out of the filter that was attached to the Volkswagen Clean Diesel tail pipe and they drink it.

Id.

B. VOLKSWAGEN, AUDI, AND PORSCHE DEVELOPED MULTI-MILLION DOLLAR ADVERTISING CAMPAIGNS PREMISED ON DECEIVING CONSUMERS ABOUT "CLEAN" DIESEL

56. Having re-branded its diesel technology with the false, but stereotype-busting, moniker "Clean Diesel," Volkswagen and the other Defendants pushed their diesel-powered vehicles in the State of New Mexico with a massive marketing campaign funded by tens of millions of dollars every year. Consumers in New Mexico were bombarded by print ads (appearing in newspapers, magazines, and brochures), television commercials, Internet websites, online banner ads, YouTube videos, social media feeds, and with direct dealer communications condoned and supported by Defendants. All of this advertising was premised on the lie that Defendants' TDI® diesel engine technology was "clean," "green" and good for the environment, without necessitating compromises in vehicle performance or efficiency. None of this was true, and thus all of the advertising for the Affected Vehicles was unfair, deceptive, false, or misleading.

57. Defendants' advertising is comprised of both affirmative misrepresentations and omissions. With respect to omissions, Defendants marketed and sold each of the Affected Vehicles despite knowing that they failed to comply with emissions regulations, and thus Defendants wrongfully omitted, and failed to advise consumers, that the Affected Vehicles were illegal to drive on account of their non-compliant emissions of nitrogen oxides, and undesirable to purchase, own or operate because they were harmful to the environment.

58. With respect to affirmative misrepresentations, Defendants' entire marketing and advertising campaigns for each of the Affected Vehicles was premised on the lie that its diesel-powered vehicles were great performing, highly-efficient, "clean," environmentally-friendly options to consumers, when the exact opposite was true. The touted performance and efficiency of the Affected Vehicles in Defendants' advertising was unfair, deceptive, false or misleading because the touted performance and efficiency ratings were only attainable by dramatically exceeding emissions regulations. The "clean," "green" and "environmentally-friendly" or "eco-friendly" representations were also unfair, deceptive, false or misleading because the cars were dirty, bad for the environment, and dramatically exceeded emissions regulations for harmful pollutants.

59. In all of Defendants' advertisements, moreover, the mere description of the diesel engine technology itself, regardless of the particular Affected Vehicle, as "TDI® Clean Diesel" was unfair, deceptive, false, or misleading. Thus, this is a case were Defendants boldly touted untruths, and tried to sell vehicles on the basis of a misleading and deceitful marketing message.

60. While many examples of Defendants misleading advertising and marketing have since been "scrubbed" from a variety of Internet sources by Volkswagen, many example of these

deceptive advertisements are described below, with additional examples of unfair, deceptive, false, or misleading advertising to be obtained in discovery.

1. Volkswagen's Unfair and Deceptive Advertisements

(a) VW's "Clean Diesel" Campaign

61. Beginning in 2008, Volkswagen set out to change the U.S. consumer's perceptions about diesel engines from being dirty, smoky, sooty, and bad for the environment to being "clean" and a top choice for the eco-conscious car buyer.

62. In August 2008, by way of a corporate press release, Volkswagen boasted that it had developed the first diesel engine to comply with the emissions standards in all 50 states, namely, the 2.0 liter TDI® diesel, which initially debuted in the Volkswagen Jetta.

63. According to VW America's then-CEO, Stefan Jacoby: "We are proud to be the first manufacturer to offer a clean diesel vehicle for sale in all 50 states[.]" The press release further touted that the Jetta TDI® offered a "no compromise alternative fuel driving experience, that provides the customer with the best of both worlds – excellent fuel efficiency combined with a dynamic driving experience."

64. Starting by at least early 2009, through a variety of print ads, television commercials, and through various means of Internet marketing, Volkswagen embarked on a massive new campaign in North America to promote and tout its now-growing "family" of supposedly "Clean Diesel" TDI® vehicles.

65. Volkswagen's re-branding of its 2.0 liter and 3.0 liter TDI® diesel engines as "Clean Diesel" was intended to convey, and did convey, to consumers that its TDI® diesel engines were better than diesel engines of the past because they purportedly ran "clean," not only with less smoke, soot, and pollutants than older diesel engines, but also in an environmentally-friendly and legally-compliant manner with respect to emissions.

66. In fact, Volkswagen repeatedly used the word "Clean" in its marketing to refer specifically to its engine's emissions, attempting to appeal to environmentally-conscious consumers who might otherwise have been concerned about pollution known to be associated with diesel engines. Volkswagen's "Clean Diesel" campaign was designed to convince these environmentally-conscious consumers that such pollution concerns had been eliminated thanks to Volkswagen's advanced diesel technologies, and that therefore Volkswagen's "Clean Diesel" family of vehicles might appeal to a consumer that might otherwise be considering hybrid vehicle offerings from Volkswagen's competitors.

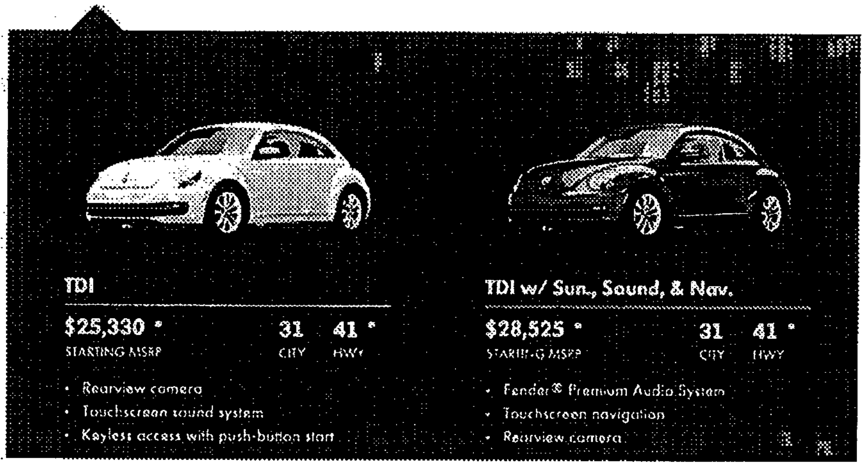
67. All of Volkswagen's advertisements containing the "Clean Diesel" statement were unfair, deceptive, false, or misleading to consumers because the Volkswagen's vehicles were not "clean." In truth, they emitted dangerously high levels of pollutants, including nitrogen oxides, far in excess of legal limits, and were not good or better for the environment when compared to hybrids or virtually any other gas-powered passenger vehicle on the market. Some examples of these misleading "Clean Diesel" promotions are as follows:

Meet the Volkswagen
TDI Clean Diesel
Family.

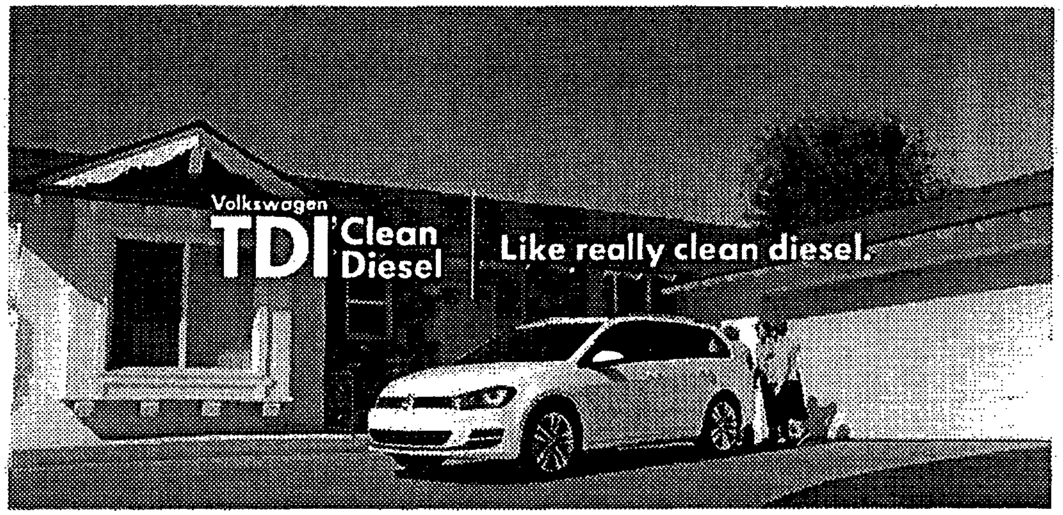
TDI® Clean Diesel

Welcome to Volkswagen
TDI Clean Diesel
Event

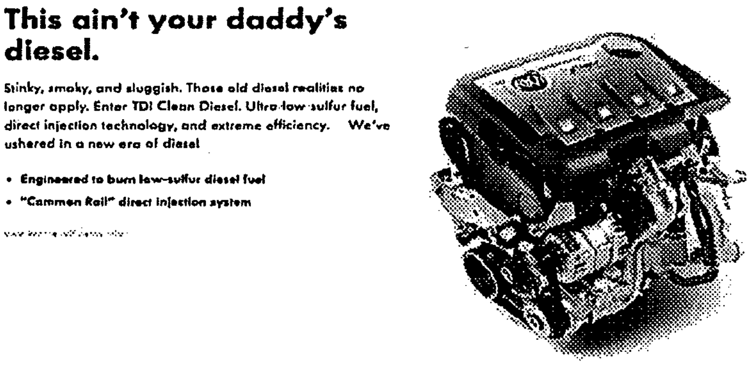
Beetle TDI® Clean Diesel


TDI
$25,330 *
STARTING MSRP
31
CITY
41 *
HWY
• Rearview camera
• Touchscreen sound system
• Keyless access with push-button start
TDI w/ Sun., Sound, & Nav.
$28,525 *
STARTING MSRP
31
CITY
41 *
HWY
• Fender® Premium Audio System
• Touchscreen navigation
• Rearview camera

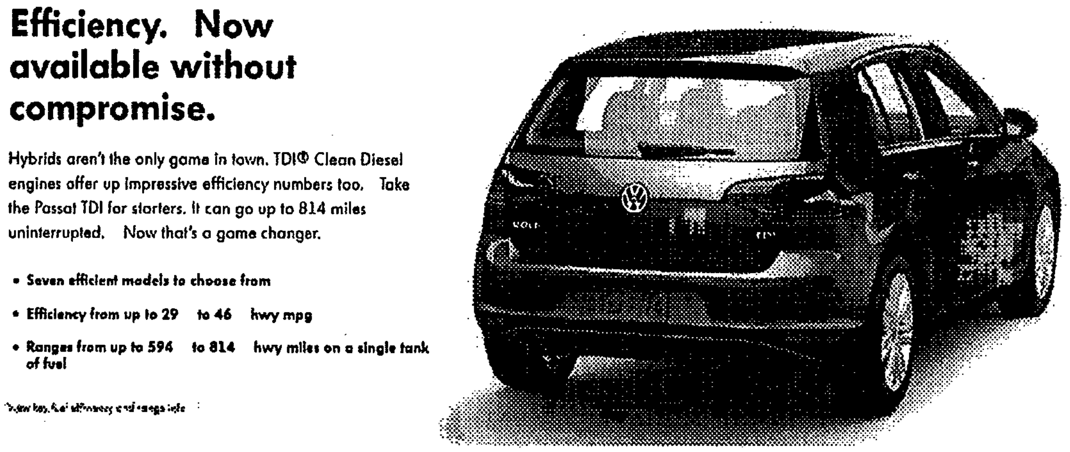
68. The supposed cleanliness of Volkswagen's TDI® vehicles was heavily emphasized and became the centerpiece of Volkswagen's diesel advertising campaign. As if "Clean" diesel was not a strong enough message, Volkswagen at times highlighted just how "Clean" by adding "Like really clean diesel" to certain advertisements, as follows:


Volkswagen
TDI Clean Diesel
Like really clean diesel.

69. In another particular advertisement, appearing at least on a Volkswagen's website, Volkswagen touts: "This ain't your daddy's diesel... Stinky, smoky, and sluggish. Those old diesel realities no longer apply. Enter TDI Clean Diesel. Ultra-low-sulfur fuel, direct injection technology, and extreme efficiency. We've ushered in a new era of diesel."


This ain't your daddy's diesel.
Stinky, smoky, and sluggish. Those old diesel realities no longer apply. Enter TDI Clean Diesel. Ultra-low-sulfur fuel, direct injection technology, and extreme efficiency. We've ushered in a new era of diesel
• Engineered to burn low-sulfur diesel fuel
• "Common Rail" direct injection system

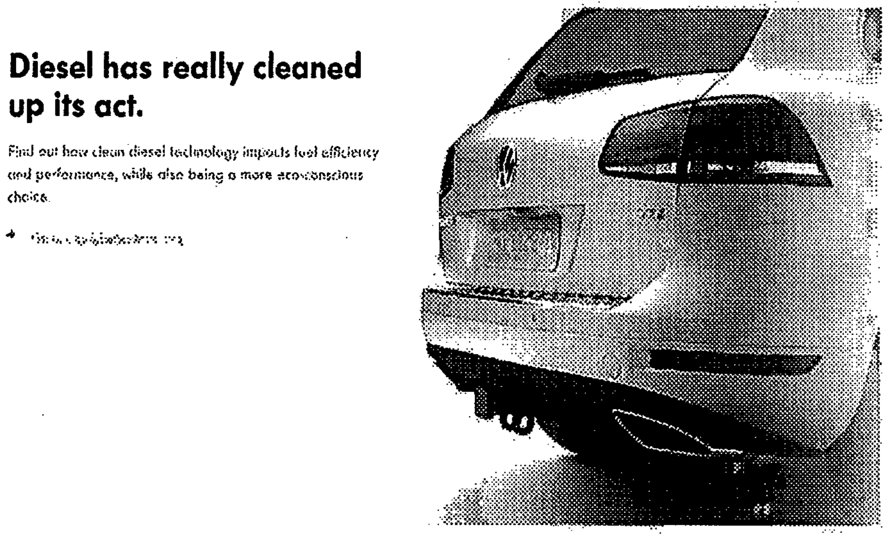
70. In addition to promoting the idea of "Clean" diesel, Volkswagen also targeted consumers with a misleading message about its efficiency and performance, hoping to lure potential hybrid customers with false promises about TDI® diesel technology.


Efficiency. Now available without compromise.
Hybrids aren't the only game in town. TDI® Clean Diesel engines offer up impressive efficiency numbers too. Take the Passat TDI for starters. It can go up to 814 miles uninterrupted. Now that's a game changer.
• Seven efficient models to choose from
• Efficiency from up to 29 to 46 hwy mpg
• Ranges from up to 594 to 814 hwy miles on a single tank of fuel

Of course, the touted efficiency and performance in this particular ad could only be achieved by cheating emissions tests, and not through any miracle of German engineering. Once these vehicles are brought within the emissions regulations, through the addition of urea injection tanks, or through some other combination of fixes, the touted efficiency and performance features in Volkswagen's advertisements will be diminished or lost entirely.

71. Volkswagen also ran numerous ads, including banner ads on unrelated websites, that promoted its "Clean Diesel" technology by directing consumers to Volkswagen's website, or to other so-called "unbranded" websites that were designed and funded (at least in part) by Defendants, but which were disguised as independent advice concerning diesel-powered cars.

72. For example, Volkswagen ran the following ad, promoting how its diesel technology was "clean" and an "eco-conscious choice," and then it directed consumers to an unbranded website called "clearlybetterdiesel.org."


Diesel has really cleaned up its act.
Find out how clean diesel technology impacts fuel efficiency and performance, while also being a more eco-conscious choice.

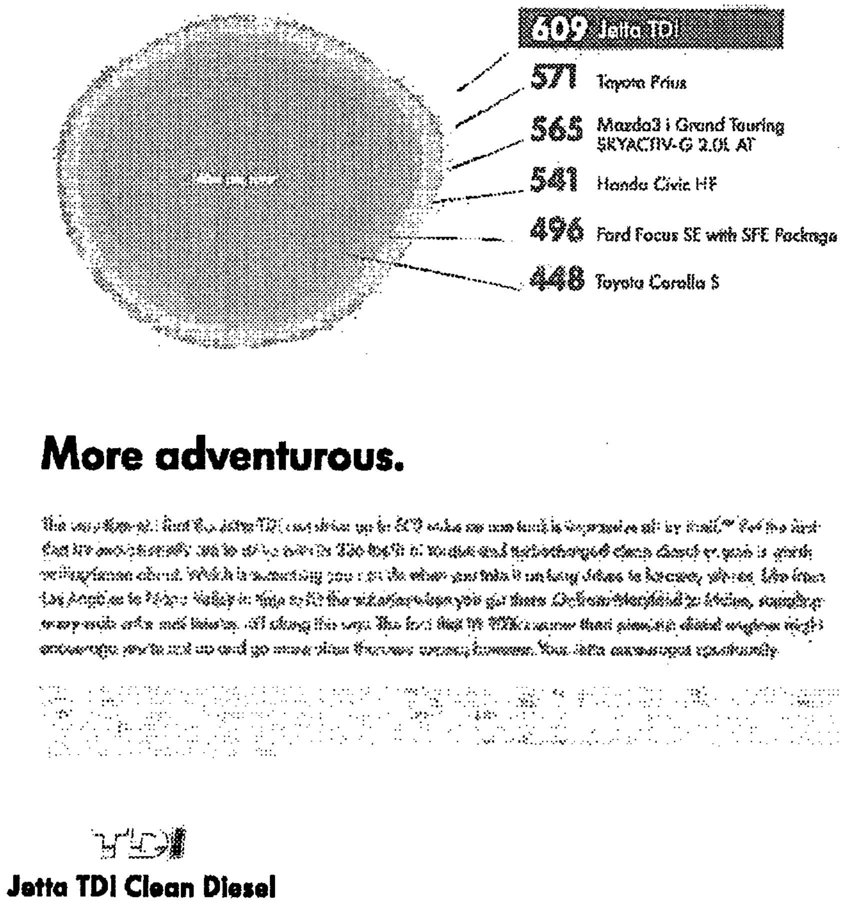
The "clearlybetterdiesel.org" unbranded website remains active, but, curiously, several buttons and links have now been disabled. Specifically, the buttons linking to "Environment" (which presumably boasted about TDI's high efficiency and low emissions) and "Partners" (which includes Defendants here) are no longer accessible.

73. That website (www.clearlybetterdiesel.org), however, has not yet been completely scrubbed of unfair, deceptive, false, or misleading marketing. For example, the site continues to falsely represent that:

> The term "Clean Diesel" refers to innovative diesel engine technology, as well as the latest diesel fuel for vehicles. In contrast to traditional diesel, Clean Diesel is superior, since both ***the new generation of engines*** and the fuel itself ***meet the strictest emission regulations in the U.S. (issued by the state of California)***. Clean Diesel fuel contains less than 15 parts per million of sulphur; our Clean Diesel partner vehicles deliver on average 18% higher fuel efficiency while reducing CO_2 emissions when compared to corresponding gas models. ***Since Clean Diesel is not only cleaner but also more fuel-efficient, the new Clean Diesel vehicles are friendlier to both the environment and drivers' wallets throughout the U.S.*** (emphasis added).

74. Volkswagen also boasted about "Clean Diesel's" supposed efficiency when compared to hybrid vehicle offerings of competitors, again in an effort to appeal to the environmentally-conscious consumer. At the same time, Volkswagen would tout how its

vehicles also ran clean, falsely claiming in one particular ad that the Jetta TDI was "90% cleaner than previous diesel engines," as follows:


609 Jetta TDI
571 Toyota Prius
565 Mazda3 i Grand Touring SKYACTIV-G 2.0L AT
541 Honda Civic HF
496 Ford Focus SE with SFE Package
448 Toyota Corolla S
More adventurous.
TDI
Jetta TDI Clean Diesel

(b) Volkswagen's Think Blue And "Eco-Conscious" Consumer Marketing

75. The ultimate dream for Volkswagen's marketing arm came to pass in 2009 when the Jetta TDI® was awarded the "2009 Green Car of the Year," by *Green Car Journal*. As a result of the award – which was bestowed only because of the false emissions and efficiency figures Volkswagen had concocted with its "defeat device" – the Company began marketing the Jetta TDI® as the "Official Pace Car of the Environment."

76. Marketing TDI® as not only "Clean," but also "green" and "eco-friendly" has pervaded Volkswagen's advertisements ever since. In 2010, the Audi A3 TDI® received the same award. Both awards, however, have since been rescinded.

77. Volkswagen did not hesitate to capitalize on its bogus environmental awards, and created a campaign purportedly dedicated to eco-friendly living and an environmentally-friendly lifestyle that it called "Think Blue." As part of the Think Blue campaign, Volkswagen's TDI® vehicles were represented as "one part of the Volkswagen Think Blue initiative, our goal of creating and encouraging eco-conscious products and behaviors." Think Blue, Volkswagen said, was "about being more responsible on the road and more environmentally conscious," and TDI® equipped vehicles supposedly fostered these principles.

78. Marketing materials and advertisements for Volkswagen vehicles since 2009 have consistently portrayed TDI® diesel vehicles as being built "for the eco-conscious" consumer and an "eco-conscious choice," because – according to Volkswagen's false claims — TDI® technology "delivers a dramatic reduction in both fuel consumption and exhaust emissions and offers some of the cleanest and most efficient alternatives on the market today." One tagline in Volkswagen's advertisements for the TDI® diesel vehicles even stated "Thanks in advance from the environment."

(c) Volkswagen Print Brochures And Website Statements

79. Volkswagen also made unfair, deceptive, false, or misleading statements in its print brochures, which were made available at dealerships and which were also available online at Volkswagen's Internet website. These brochures made numerous statements falsely describing Volkswagen's TDI® diesel engine technology, including statements concerning its high efficiency, powerful performance, and supposed "clean" and "green" characteristics. In addition,

the brochures falsely touted eco-friendly emissions figures and the legally-compliant nature of the vehicle's emissions in all 50 states, including New Mexico.

80. For example, a "2012 Volkswagen Family" brochure, applicable to all Volkswagen models, states:

> Let TDI Clean Diesel set you free from the filling station. Our TDI engines achieve astonishing mileage and range—up to 43 highway mpg and 795 miles* on a single tank without sacrificing one bit of turbocharged performance. ***That's all thanks to the TDI technology that uses a direct injection system and runs on ultra-low-sulfur diesel, helping reduce sooty emissions by up to 90% compared to previous diesel engines.*** On most models, you can even choose the available DSG automatic transmission with Tiptronic to take that turbo engine to a whole new level. (emphasis added, notes omitted).

81. Similarly, a "2013 Volkswagen Family" brochure, applicable to all models, states:

> When you've had your fill of filling stations, hit the road in your TDI Clean Diesel Volkswagen. These engines achieve astonishing mileage and range—up to 43 highway mpg and 795 miles on a single tank* without sacrificing one bit of turbocharged performance. ***That's all thanks to the TDI technology that uses a direct injection system, and runs on ultra-low-sulfur diesel, helping reduce emissions by up to 90% compared to previous diesels.*** Far and away, it's our best diesel yet. (emphasis added, notes omitted).

82. A Volkswagen 2012 "Volkswagen TDI Clean Diesel" brochure applicable to the six models of Volkswagen TDIs then on the market (the Jetta, Jetta SportWagen, Golf, Passat, Beetle, and Touareg) states:

> ***These are not the kind of diesel engines that you find spewing sooty exhaust like an old 18-wheeler. Clean diesel vehicles meet the strictest EPA standards in the U.S. Plus, TDI technology helps reduce sooty emissions by up to 90%,**** giving you a fuel-efficient and ***eco-conscious vehicle***. (emphasis in original, notes omitted).
>
> -and-
>
> ***Think beyond green. TDI represents one part of the Volkswagen Think Blue initiative, our goal of creating and encouraging eco-conscious products and behaviors***. Join us in being more responsible on the road and on the planet.

83. A Volkswagen 2010 Jetta and Jetta SportWagen brochure states:

> The 2.0L TDI® Clean Diesel engine gives you 140hp and 236lbs-ft of torque. ***This engine is the toast of Europe for its*** quickness, ***low emissions***, and fuel efficiency—a staggering 38 city/44 highway mpg (automatic) based on real-world AMCI-certified testing (30 city/42 highway mpg. EPA estimates).* (emphasis added, notes omitted)
>
> -and-
>
> Jetta TDI Clean Diesel offers fuel efficiency,* power, performance, and a $1,300 tax credit** from Uncle Sam because ***it qualifies as an Advanced Lean Burn Credit. Or, in other words, lean, mean, cleaner burning machines. Volkswagen believes in delivering a no-compromise German-tuned auto that performs, and still leaves a small carbon footprint. The Volkswagen TDI engine is cleaner than conventional diesels, emitting as much as 95% less soot than previous diesel engines, as well as a reduction in oxides of nitrogen*** and sulfur. It's powerful, with the kind of low-end torque that racers and tuners demand. It's efficient, using a turbocharger and smart exhaust design to burn fuel more effectively. ***So much so, in fact, that Volkswagen was the first automaker to make clean diesel cars certified in all 50 states.*** And best of all, it will help save you money with an out-of-this-world AMCI-estimated mileage of 38 city/44 highway mpg* (automatic) and over 594 miles on a single tank of fuel.† There's even a Jetta SportWagen TDI Clean Diesel, with the same astonishing clean diesel technology, plus a whopping 66.9 cubic feet of cargo room.††" (emphasis added, notes omitted).

84. A Volkswagen 2011 Golf brochure states:

> Regardless of which Golf model you get, you'll be seeing a lot fewer gas stations and a lot more road. The 2.5L Golf comes standard with a 170-hp, in-line five-cylinder engine with 177 lbs/ft torque and impressive fuel efficiency rated at 23 city/30 highway mpg*. ***Opt for the Golf TDI model and you'll enjoy a turbocharged clean diesel engine*** with 140 hp and 236 lbs/ft of torque that will run you even farther at a whopping 30 city/42 highway mpg. That's up to 609 miles per tank*. * ***And you'll do it all with 95 percent fewer sooty emissions than diesel engines of old, making it cleaner for both you and the planet.*** So whether you're in the market for IntelliChoice's 2010 "Best Overall Value Compact Car over $17,000,"† or you want to go for a variation on that theme and get the ever-popular TDI model, you can't go wrong. In fact, you can go very right for a long, long time." (emphasis added, notes omitted).

85. A Volkswagen 2012 Passat brochure states:

> Let the Passat TDI Clean Diesel set you free from the filling station. It achieves an astonishing 43 highway mpg and travels 795 miles* on a single tank without

sacrificing one bit of turbocharged performance. ***That's all thanks to its TDI technology that uses a direct injection system and runs on ultra-low-sulfur diesel, helping reduce sooty emissions by up to 90% compared to previous diesel engines.*** You can even choose the available DSG automatic transmission with Tiptronic to take that turbo engine to a whole new level." (emphasis added, notes omitted);

-and-

The TDI Clean Diesel engine was designed and engineered around one simple belief: driving is more fun than refueling. ***So besides the reduced emissions and torque-filled benefits you experience behind the wheel of the Passat TDI, it also saves you money at the pump.*** " (emphasis added).

86. A Volkswagen 2013 Beetle brochure states:

Start the TDI® Clean Diesel model and hear the surprisingly quiet purr of ***the first clean diesel Beetle***, designed for both power and efficiency.** (emphasis added, notes omitted).

87. A Volkswagen 2014 Beetle brochure states:

2.0L TDI Clean Diesel engine. Engineered with the idea that less is more. The Beetle TDI has lower CO2 emissions compared to 84% of other vehicles.* ***So every getaway you make will be a cleaner one.*** (emphasis added).

88. A Volkswagen 2014 Touareg brochure states:

3.0L TDI Clean Diesel engine. Engineered with the idea that less is more. The Touareg TDI has lower CO2 emissions compared to 88% of other vehicles.* ***So every getaway you make will be a clean one.*** " (emphasis added).

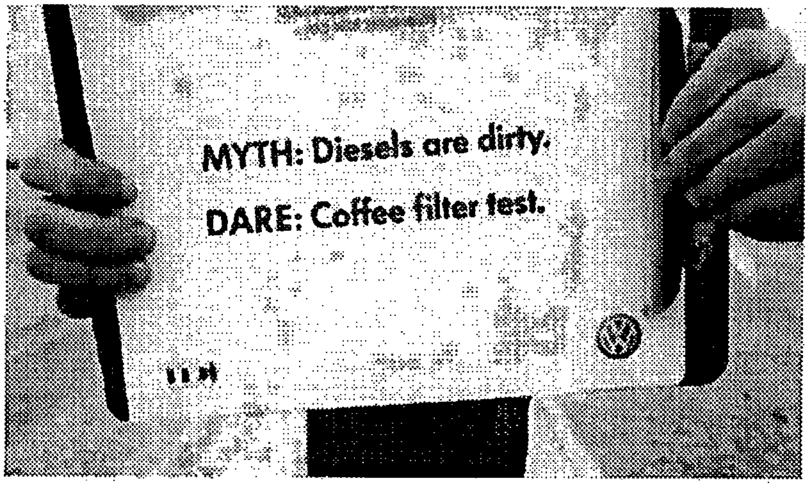
(d) Volkswagen's "TDI Truth & Dare" Campaign

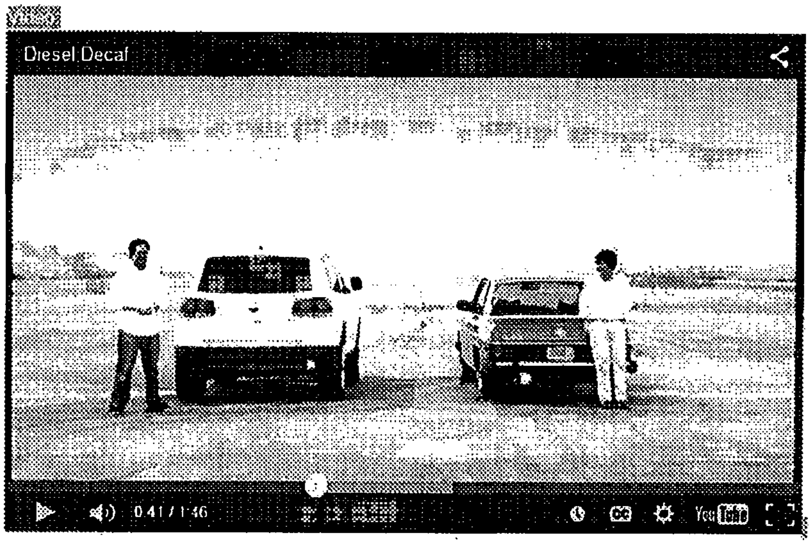
89. In addition to its more traditional vehicle brochure marketing, Volkswagen also pressed its misleading marketing message through Internet marketing. For example, in May 2009, Volkswagen launched its "TDI Truth & Dare" campaign through a website designed to promote its TDI diesel fuel line of cars.

90. The website, www.tditruthanddare.com, featured video clips and interactive tools challenging "myths" like "diesels are slow" and "diesel is dirty." In the "eco-conscious car showdown," the Jetta TDI races against the Toyota Prius, and then a purported "Savings

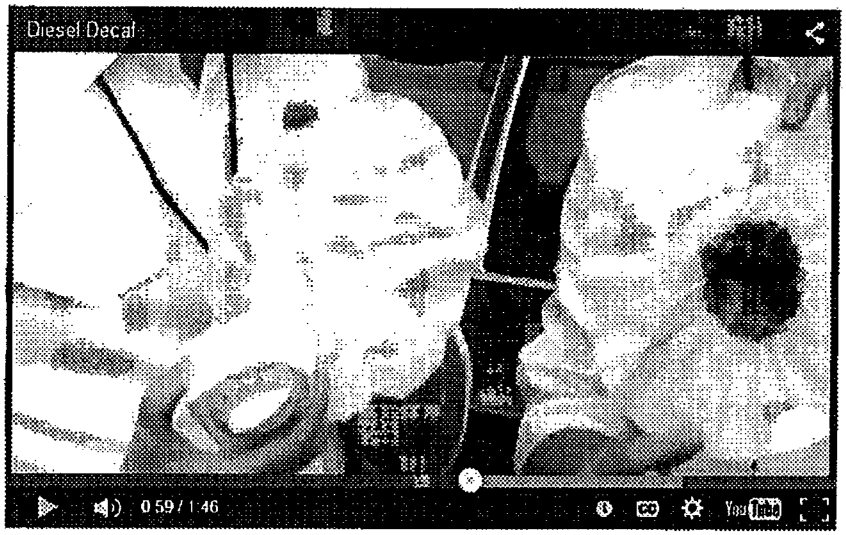
Calculator" showed website visitors the "facts" about how VW's TDI diesel cars stacked up against their competitors with regard to emissions testing and fuel-efficiency.

91. On the same website, in one of the more startling (and misleading) videos, Volkswagen's actors performed what it called a "diesel decaf" challenge, where coffee filters were placed on the exhaust pipes of a Touareg TDI® and an old diesel Mercedes, and then coffee was made using both. Screen shots from this video are below:





Video:

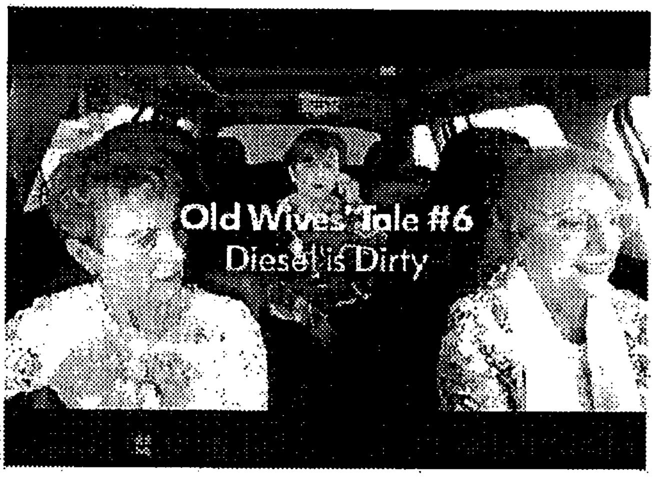


See https://www.youtube.com/watch?v=zvt7Wrjwc-Q (last accessed January 7, 2016).

92. According to Volkswagen of America's VP for Marketing, Tim Ellis, "[w]e have a lot of fun in debunking a lot of the myths... And it's just the beginning. We're going to ramp it up in the coming year." And ramp it up they did, pouring tens of millions of dollars more, year after year, into promoting falsehoods about the purportedly cleanliness and eco-friendly characteristics of their TDI® diesel engine technology.

(e) Volkswagen's "Old Wives Tales" Campaign

93. Another series of enormously successful (and stunningly misleading) Internet and television commercials run by Volkswagen starting in 2013-2014 was its "Old Wives Tales" campaign, which used three "old wives" to purportedly debunk the myths surrounding diesel technology. A screen shot of one of those commercials appears below:



94. In this commercial, one grandmotherly-figure seated in the passenger seat of a sparkling new, white VW Golf SportWagen asks, "Aren't diesels dirty?" "Diesel in Latin means 'dirty,'" chimes in her friend in the backseat. To prove them wrong, the old lady in the driver's seat gets out of the car and holds her white scarf up to the tailpipe of the running car, then exclaims, "See how clean it is?" while holding up her spotless scarf.

See https://www.youtube.com/watch?v=brp48vioYVM (last accessed January 7, 2016).

95. In other installments of the "Old Wives" ad campaign, additional supposed myths of diesel technology were attacked and purportedly debunked, including that diesel engines were sluggish, loud, or smelled bad.

(f) Volkswagen's Facebook and Twitter Accounts

96. Volkswagen also targeted consumers with deceptive advertising through other social media sources, including the Company's Facebook and Twitter accounts.

97. On or about May 18, 2009, Volkswagen started bombarding consumers with banner ads, linking people to their "Meet the Volkswagens" Facebook page where they could watch a variety of ads, including the "Truth & Dare" ads, and learn more about the "TDI Clean Diesel" line of vehicles.

98. With respect to the Company's Twitter account (which has since been scrubbed of diesel references), it previously contained false marketing statements about Volkswagen's Clean Diesel technology. For example, a tweet from earlier in 2015 stated: "Diesel cars are really smoky and sluggish? That's the past. The 2015 Golf TDI is, however, a lot of fun." Other tweets stated "Some questions are hard to ask, unless you're asking about top-notch clean diesel. That's easy" and "what is clean diesel exactly? It's a diesel engine that has all the fuel efficiency without the sluggishness or smoke!"

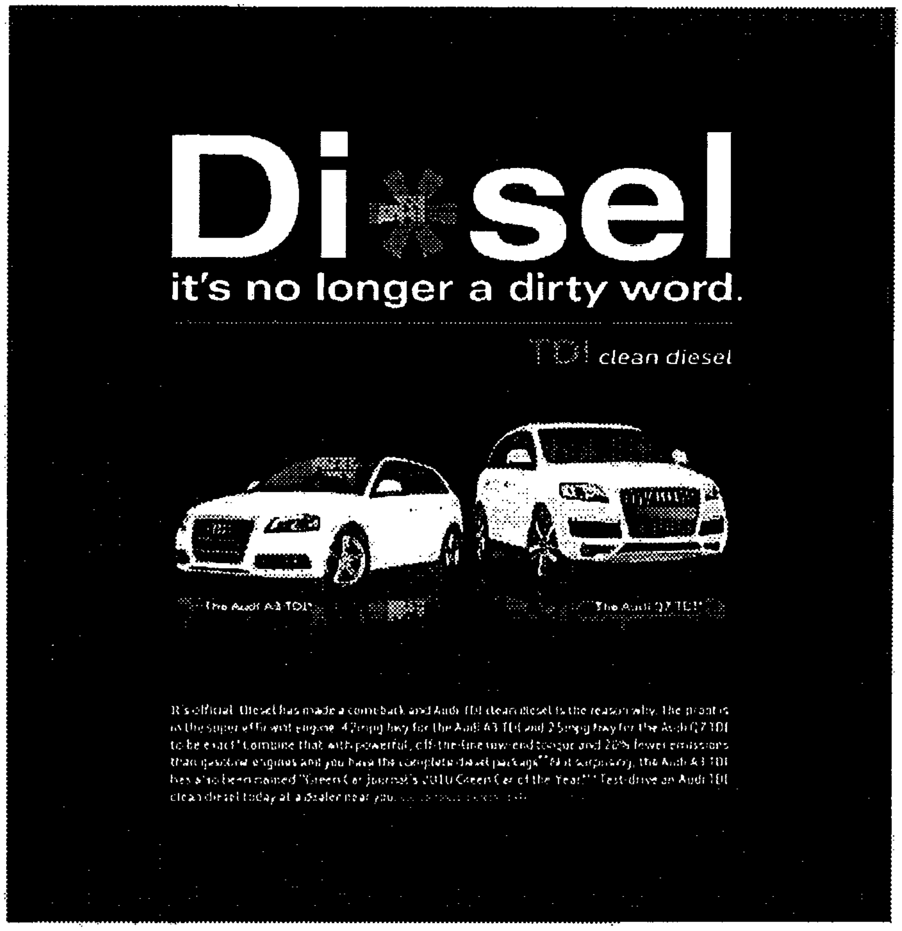
99. In all of its social media marketing, through banner ads, Facebook, and Twitter, Volkswagen's message was consistently unfair, deceptive, false, or misleading because it portrayed its TDI diesel engine vehicles as being "clean," "green," and fit for the "eco-conscious" consumer, when in truth the Affected Vehicles were dirty, high-pollution emitting vehicles that were not only illegal to drive, but that no consumer concerned about the environment would even consider purchasing.

2. Audi's Unfair, Deceptive, False, and Misleading Advertisements

(a) Audi's "Clean Diesel" Campaign

100. Like its parent company, Volkswagen, Audi also adopted the misleading "Clean Diesel" slogan to assist in its marketing push, and it relied on the "Clean Diesel" tagline to

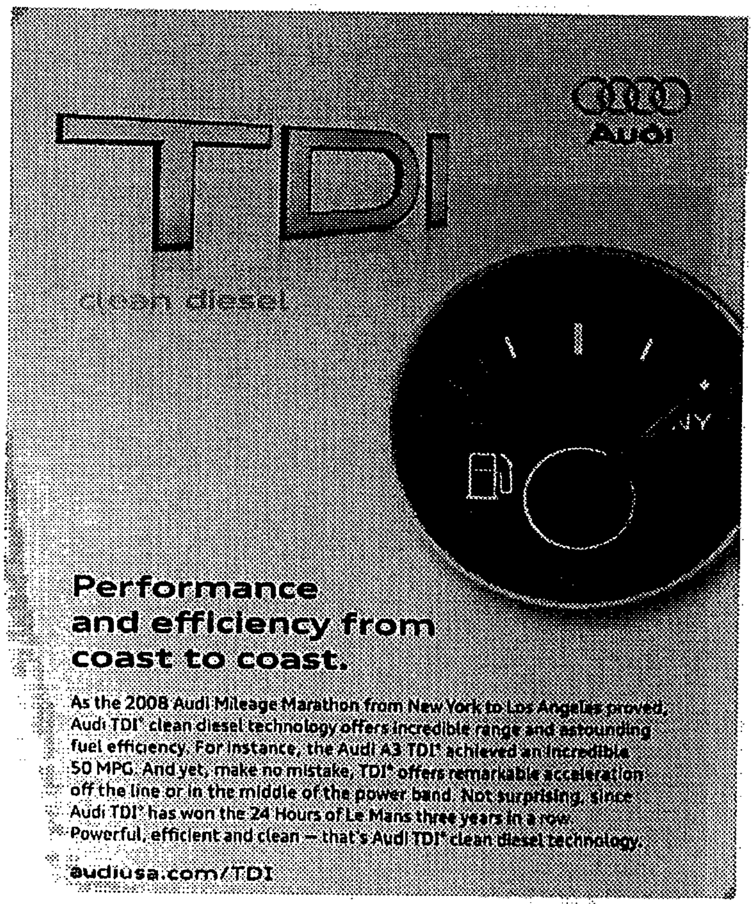
advertise and market its diesel engine vehicles as being "clean," "green" and environmentally-friendly throughout its advertising. Some examples of Audi's print and online advertisements include the following:


Di*sel
it's no longer a dirty word.
TDI clean diesel

Di*sel
It's no longer a dirty word

Introducing the new 2014
Audi TDI® clean diesel models

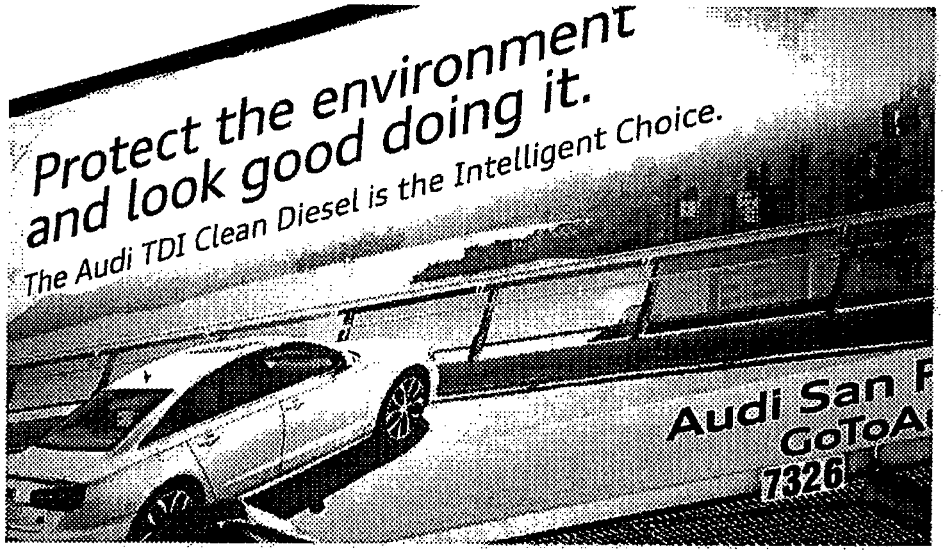
101. Audi's use of the "Clean Diesel" branding for its Affected Vehicles was unfair, deceptive, false, or misleading for the same reasons as it was Volkswagen. Like Volkswagen, Audi also boasted about performance and efficiency in its diesel vehicles through marketing and promotional advertisements, despite the fact that such performance and efficiency features were only possible with illegal vehicle emissions. For example, Audi ran the following print ad, among many others, touting the supposed performance and efficiency of its TDI® vehicles:


Audi
TDI
clean diesel
Performance
and efficiency from
coast to coast.
As the 2008 Audi Mileage Marathon from New York to Los Angeles proved, Audi TDI® clean diesel technology offers incredible range and astounding fuel efficiency. For instance, the Audi A3 TDI® achieved an incredible 50 MPG. And yet, make no mistake, TDI® offers remarkable acceleration off the line or in the middle of the power band. Not surprising, since Audi TDI® has won the 24 Hours of Le Mans three years in a row. Powerful, efficient and clean – that's Audi TDI® clean diesel technology.
audiusa.com/TDI

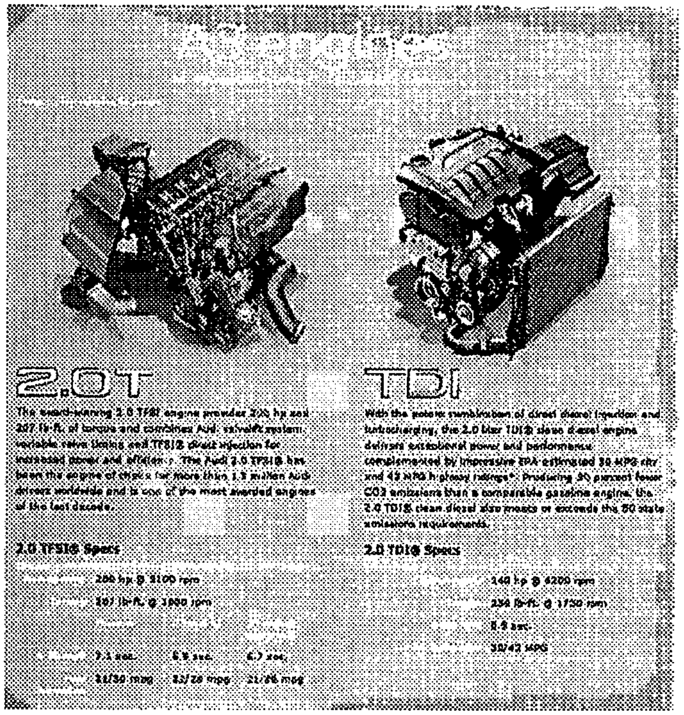
102. Of course, just as with Volkswagen, the performance and efficiency touted in the advertisement were only possible because of Audi's emissions test cheating through the defeat device it installed on all of its Affected Vehicles. Had Audi designed its Affected Vehicles in a manner that actually complied with the emissions laws, it would not have been able to fairly and truthfully make the performance and efficiency claims that it did.

(b) Audi's Environmental Marketing

103. Like Volkswagen, Audi also heavily relied on purported "green" marketing, trying to push the idea that its diesel vehicles were good for, and protective of, the environment. For example, in some print ads, which it also used as billboard advertising in some markets, Audi promoted its diesel cars as being protective of the environment, as follows:


Protect the environment
and look good doing it.
The Audi TDI Clean Diesel is the Intelligent Choice.

104. In other print ads for the Audi A3, Audi also falsely touted in its advertising that its 2.0L TDI® clean diesel engine "meets or exceeds the 50 state emissions requirements" when that was only possible because of illegal defeat device software installed on the Audi A3 2.0L TDI® engine.


2.0T
TDI
2.0 TFSI® Specs
2.0 TDI® Specs

105. Where Volkswagen had its "Think Blue" campaign, designed to mislead consumers into believing they were dealing with a socially and environmentally-responsible company that manufactured and sold eco-friendly cars, Audi published for consumers its purported "Responsibility Report," describing social and environmental initiatives that the Company purported to adhere and promote.

106. In Audi's 2015 Responsibility Report, for example, it highlighted its TDI® diesel technology, and on a page titled "TDI clean diesel," Audi falsely claims that "thanks to particulate filters that eliminate diesel soot and an AdBlue emissions system that scrubs nitrogen oxide emissions, our diesel engines comply with the world's most demanding emissions laws" – a knowingly false statement.

(c) Audi Print Brochures And Website Statements

107. Deceptive and unfair descriptions of Audi's Affected Vehicles also pervaded its print brochures, which were available both online and in hard-copy from dealerships. For example, an Audi 2011 A3 brochure states:

> With the potent combination of direct diesel injection and turbocharging, the 2.0 liter TDI® clean diesel engine delivers an impressive 236 lb-ft. of torque and produces 140hp. The power and performance is complemented with impressive EPA-estimated 30 MPG city and 42 MPG highway ratings*. ***Producing 30 percent fewer CO_2 emissions than a comparable gasoline engine, the 2.0 TDI clean diesel also meets or exceeds the 50 state emissions requirements.*** (emphasis added, notes omitted)
>
> -and-
>
> ***Long gone are the days of dirty, smoking diesel engines. Audi TDI clean diesel technology is responsible for the cleanest diesel engines in the world***, with 30 percent fewer CO2 emissions than comparable gasoline engines, making it an environmentally friendly alternative to gasoline power. ***In fact, TDI clean diesel is compliant with California's ULEV II requirement – the world's most stringent emission standard. The result is a significant reduction in emissions that contribute to global warming.*** (emphasis added).

108. Audi 2016 A6 and A7 brochures similarly (and falsely) state that the TDI® versions of these cars meet emissions rating "ULEV II" and the 2016 A6, A7, and Q5 brochures all further identically state:

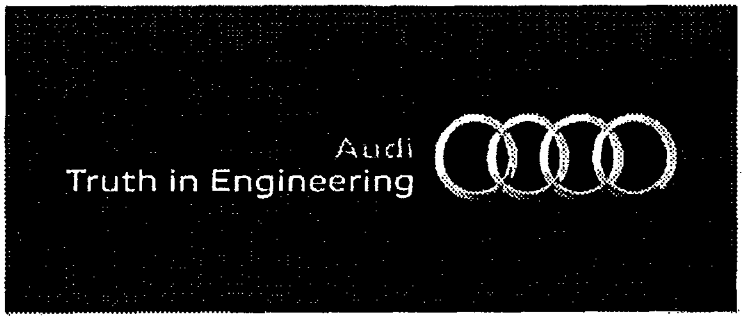
> Taking advantage of the greater power density of diesel fuel over traditional gasoline, the available 240-hp 3.0-liter TDI® clean diesel V6 delivers incredible torque (428 lb-ft) and passing power, while boasting impressive fuel efficiency numbers.[1] ***It also produces fewer emissions*** with a combination of Piezo direct injection, a high compression ratio, ***and innovative after-exhaust treatment that helps eliminate up to 95% of diesel NOx emissions.*** (emphasis added, notes omitted)

109. An Audi 2016 A8 brochure also lists the TDI® versions of this car as meeting emissions rating "ULEV II" and further states:

> With 240 hp and 428 lb-ft of torque on tap, the available 3.0-liter TDI® clean diesel engine's elasticity in the passing lane is almost as impressive as its ability to take on even the longest road trips. ***And with features like AdBlue® exhaust after-treatment helping to make every journey a little cleaner, this is a performance win for all sides.*** (emphasis added).

(d) Audi's False "Truth In Engineering" Slogan

110. Most of Audi's print, Internet, and commercial advertising included Audi's now-infamous slogan, which was, and remains to this day, "Truth in Engineering."

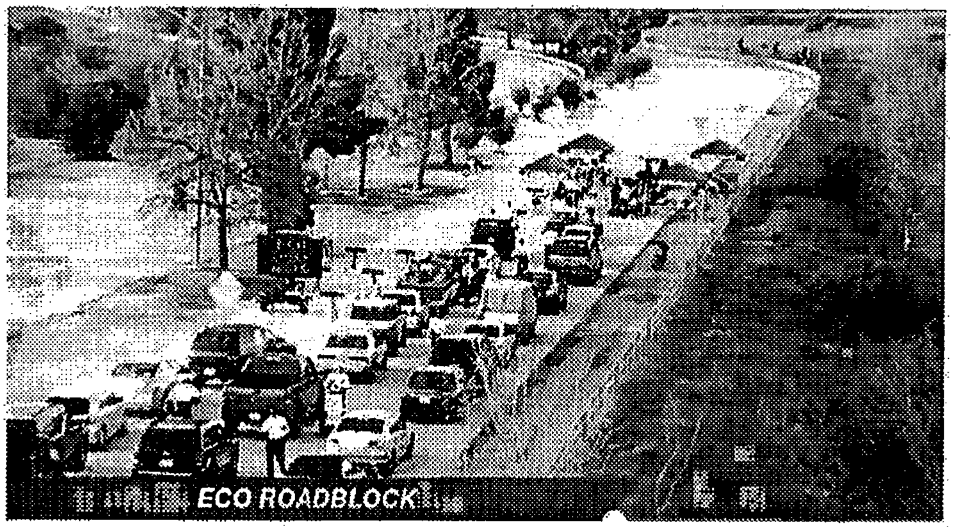


111. As we now know, however, Audi's boasting and touting of its superior engineering was premised not on "truth," but on a lie. Indeed, the engineering of the Affected Vehicle's in Audi's stable can only be described as "Deceit in Engineering" or "Engineering the

Truth" and the slogan "Truth in Engineering" is unfair and deceptive when it applies to the Audi's stable of TDI® diesel vehicles.

(e) Audi's "Green Police" Super Bowl Commercial

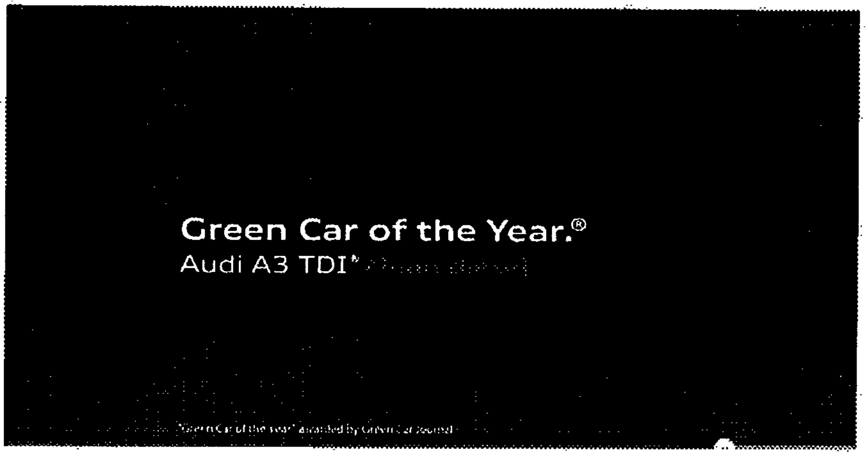
112. Audi ran numerous television commercials for its TDI® "Clean" diesel vehicles, many of which touted the supposed eco-friendly characteristics of Audi's diesel engine technology. In one particular example, called "The Green Police" – which Audi aired in the most high-profile advertising spot available during the 2010 NFL Super Bowl – Audi showed viewers a special force of environmental police that it called the "Green Police" who were charged with stopping crimes against the environment. Green police were shown arresting people for using styrofoam cups and plastic bags at the grocery store, throwing out batteries, drinking water from plastic bottles, and the like, and then viewers are taken to a highway checkpoint, called an "ECO ROADBLOCK," where cars that are bad for the environment are being flagged by the Green Police. A screen shot of this commercial appears immediately below:



113. When the Green Police at the roadblock see that one car is the Audi A3 TDI® SportsWagen, however, they give the car a "thumbs up," and the Green Police allow the driver to bypass the roadblock.

114. After speeding past the other vehicles in the white A3 TDI® SportWagen, with the Green Police jingle playing in the background, the screen then fades to black and falsely touts the supposed "green credentials" of the A3 TDI®, as follows:

Green has never felt so right.



3. Porsche's Unfair, Deceptive, False, and Misleading Advertisements

115. Like Volkswagen and Audi, Porsche similarly used the "Clean Diesel" branding in its print, website, and social media marketing its Cayenne SUV, equipped with a 3.0 liter TDI® engine, and those ads were unfair, deceptive, false, or misleading for the same reasons.

116. For example, the marketing brochure for Porsche's diesel-powered Cayenne sport-utility vehicle in 2013, which was available online or in print versions at dealerships, touted the vehicle's "Intelligent Performance and efficiency – the core characteristics of Porsche engineering." It boasted that "[t]his is no ordinary diesel. This is a Porsche 3.0 liter V6 turbo diesel engine. It's a technological marvel, able to take its unique fuel source and transform it into clean, efficient, and incredibly torque-rich power." Further, the brochure boasted Porsche had "refined" diesel engine technology, making its 3.0 V6 TDI® diesel engine "far advanced from what many people perceive – especially in terms of its acceleration, clean emissions, and quiet running operation."

117. The 2013 Cayenne Diesel brochure was also more direct in its false descriptions of the supposedly Clean Diesel technology. On a page titled, "A cleaner diesel. Exhaust technologies," Porsche describes the complete exhaust system of the vehicle and then states

plainly the processes described "help to ensure the reduction of harmful pollutants into the environment and make the Cayenne diesel compliant with U.S. emissions standards."

118. All of the above marketing and advertising, or substantially similar advertising in preceding and subsequent years, was available to and/or seen by New Mexico consumers during the time period of at least 2008 to the present. Upon information and belief, more than one form of advertisement for each vehicle was "live" and was thus available to and/or seen by New Mexico consumers during each day of the entire period of Defendants' scheme.

C. DEFENDANTS' "DEFEAT DEVICE" SOFTWARE IS EXPOSED BY RESEARCHERS AND REGULATORS

119. After marketing and selling its diesel vehicles in New Mexico and throughout the U.S. for years, in May 2014, independent researchers at West Virginia University, working with the International Council on Clean Transportation (ICCT), uncovered irregularities and inconsistencies between the published emissions levels in certain VW vehicles and the real world road tests that they had performed. *See* Final Report: In Use Emissions Testing of Light-Duty Diesel Vehicles in the United States, May 15, 2015 (available at http:// www.theicct.org/sites/default/files/publications/WVU_LDDV_in-use_ICCT_Report_Final _may 2014.pdf. (last accessed January 7, 2016).

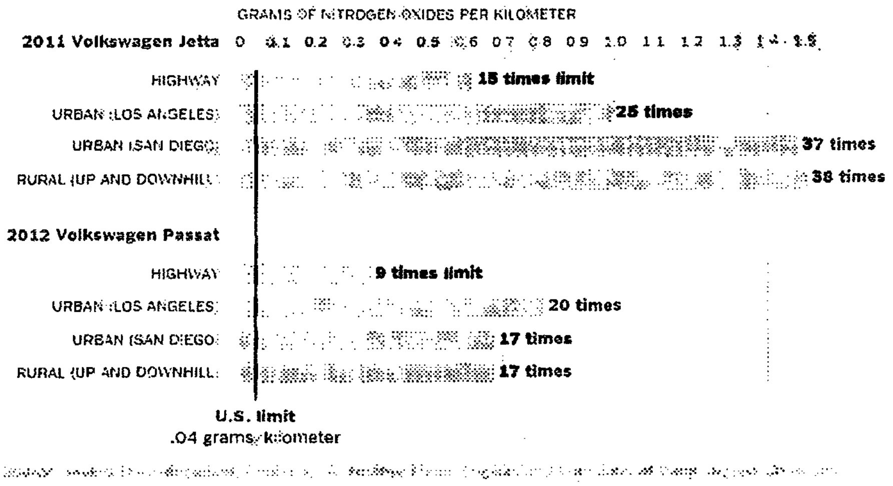
120. ICCT researchers had been testing the real-world performance of so-called "Clean Diesel" cars in Europe, where emissions regulations are more relaxed, and they came away concerned by the emissions results. The ICCT team decided to test similar U.S. cars, fully expecting them to perform better and run cleaner. They found a willing partner for the study on the campus of West Virginia University, where a group of emissions researchers who mainly dealt with heavy trucks were looking for a partner to test diesel-powered cars in the United States.

121. The study did not target Volkswagen specifically, but two out of three diesel vehicles bought for the testing were Volkswagens (Jetta and Passat) and one was a BMW X5. According to reports, the West Virginia researchers were well-versed in real world driving diesel performance, and so they had certain expectations for how the test cars should ebb and flow in their emissions depending on if they were idling in traffic or cruising at highway speeds. The two Volkswagens raised immediate red flags because their emissions did not behave as expected.

122. CARB was informed about the research irregularities and signed on to participate in the research study. The CARB regulators tested the same vehicles in their lab in order to judge cars' compliance with CARB emissions standards.

123. That testing produced a shocking result: In the lab, the Volkswagens easily passed the tests, but on the roads in California, they were failing miserably, with levels of nitrogen oxide that were 30 to 40 times higher than the regulatory standards. As published in 2014, the study found the 2011 Volkswagen TDI® Jetta and the 2012 Volkswagen TDI® Passat far exceeded emissions standards for nitrogen oxides across all driving conditions, as follows:

Average emissions of nitrogen oxides in on-road testing


GRAMS OF NITROGEN OXIDES PER KILOMETER
2011 Volkswagen Jetta
HIGHWAY
15 times limit
URBAN (LOS ANGELES)
25 times
URBAN (SAN DIEGO)
37 times
RURAL (UP AND DOWNHILL)
38 times
2012 Volkswagen Passat
HIGHWAY
9 times limit
URBAN (LOS ANGELES)
20 times
URBAN (SAN DIEGO)
17 times
RURAL (UP AND DOWNHILL)
17 times
U.S. limit
.04 grams/kilometer